STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota;
City of Minneapolis,

Plaintiff,

ORDER

v.

Mukhtar Adan et al.
(City Exhibits 2 and 3),

Defendant-Claimants.

This matter is before the Court pursuant to the Defendant-Claimants' motions to reopen their cases under the Minneapolis automated traffic control ordinances. Assistant Minneapolis City Attorney Mary Ellen Heng represents the City. The Defendants are pro se. Douglas Hazelton, Esq. submitted an *amicus* brief on behalf of the Minnesota Association of Criminal Defense Lawyers in support of the Defendants' motions.

Based on the files and proceedings herein, the Court makes the following,

ORDER

1. Defendant-Claimants' motions are GRANTED.

2. With respect to those Defendant-Claimants above who pleaded guilty to violating the Minneapolis automated traffic control ordinance, such guilty pleas are hereby withdrawn and the charges are dismissed. The City of Minneapolis shall take all necessary action to decertify the convictions and refund all fines, surcharges, and law library fees.

3. With respect to those Defendant-Claimants above who paid prosecution costs as part of a suspended prosecution agreement, the City of Minneapolis shall take all necessary action to refund such costs.

4. The Hennepin County District Court Administrator shall enter this Order into the court files of all Defendant-Claimants above.

5. The Memorandum below shall be made part of this Order.

Dated: October 1, 2007

Mark S. Wernick
Judge of District Court

MEMORANDUM

In *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007), the Minnesota Supreme Court held that the City of Minneapolis was without authority to enact ordinances creating vehicle owner liability for traffic light offenses. In the pending motions to reopen cases, the Defendants are vehicle owners who were prosecuted under the Minneapolis owner liability ordinances and whose cases were final when *Kuhlman* was decided.[1] Some Defendants pleaded guilty, paid a fine, and are seeking to have their convictions decertified and their fines refunded. Other Defendants paid prosecution costs as part of suspended prosecution agreements with the City, and are seeking to have their costs refunded.[2] Because the City was without authority to initiate the ordinance prosecutions against all of these Defendants, I am granting the Defendants' motions. The City must return

[1] Cases still pending when *Kuhlman* was decided have been dismissed by the City.

[2] In a suspended prosecution agreement, the defendant admits to the ordinance violation and pays prosecution costs, generally in the same amount of the fine. In return, the City suspends its prosecution for a specified period of time, generally one year. If no traffic violations appear on the defendant's driving record within that year, the City will dismiss the ordinance charge, resulting in such charge never appearing on the defendant's driving record. If a traffic violation does appear on the defendant's driving record within that year, the court will then enter a conviction for the ordinance violation, which will result in the ordinance violation appearing on the defendant's driving record.

these Defendants to the positions they were in before the City initiated the prosecutions against them.

A guilty plea "operates as a waiver of all *nonjurisdictional* defects" in the criminal proceeding. *State v. Lothenbach*, 296 N.W.2d 854, 857 (Minn. 1980) (Emphasis added). The Minnesota Supreme Court has long recognized that a defendant must be allowed to withdraw a guilty plea if the court did not have jurisdiction over the subject matter of the offense. In *State ex rel. K.R. Hansen v. Rigg*, 258 Minn. 388, 104 N.W.2d 553 (1960), the defendant was charged in municipal court with issuing a worthless check, a gross misdemeanor, and pleaded guilty. Before sentencing, a complaint was filed in district court charging him with being a habitual offender, based on his having been convicted of three gross misdemeanors, including the worthless check charge to which he had just pleaded guilty in municipal court. In district court, the defendant pleaded guilty to the habitual offender charge. A prison sentence was stayed and the defendant was put on probation. Some time later, probation was revoked and the prison sentence was executed. The defendant then sought post conviction relief on the grounds that the district court lacked subject matter jurisdiction, arguing that the habitual offender statute is a sentencing enhancement statute applicable to a third conviction, and not a statute that defines a distinct substantive offense. The Minnesota Supreme Court agreed: "In a criminal prosecution it is necessary that the trial court have jurisdiction of the subject matter – that is the offense – as well as the person of the defendant." 258 Minn. at 390, 104 N.W.2d at 554. Because the defendant was

not charged with an "offense" (being a habitual offender) recognized by Minnesota statutes, "the [district] court was without jurisdiction to impose sentence in this case." 258 Minn. at 391, 104 N.W.2d at 555. The Court granted the defendant's petition, notwithstanding the guilty plea. *See also, State v. Minton*, 276 Minn. 213, 217, 149 N.W.2d 384, 387 (1967) ("[I]t is firmly established that jurisdiction over the subject matter cannot be conferred by consent and that a sentence pronounced by a court which lacks jurisdiction of the subject matter is wholly void."); *State ex rel. Farrington v. Rigg*, 259 Minn. 483, 485, 107 N.W.2d 841, 842 (1961) ("A sentence pronounced by a court which lacks jurisdiction of the subject matter is wholly void and may be attacked directly or collaterally at any time.").

Like the district court in *Hansen*, the habitual offender case, the Hennepin County District Court in the vehicle owner liability cases was without power to punish the "offense" alleged. Pursuant to the Minnesota traffic code, and the holding in *Kuhlman*, no such offense lawfully existed at the time the Defendants entered their guilty pleas. Accordingly, the guilty pleas entered and the sentences imposed are "wholly void."

The City is relying on *State v. Hamm*, 423 N.W.2d 379 (Minn. 1988), for the proposition that by pleading guilty the Defendants waived their rights to challenge the validity of the ordinances. In *Hamm*, the Minnesota Supreme Court held that a statute providing for 6 person juries in misdemeanor and gross misdemeanor cases violated the defendant's state constitutional right to a 12

person jury.[3] Citing *State v. Olsen*, 258 N.W.2d 898, 907 n. 15 (Minn. 1977), and referring to the retroactivity principles set forth in *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731 (1965), the Court held that its decision would apply only to trials occurring after the date of its decision. The Court said that defendants who had not previously challenged the 6 person jury statute had waived their right to do so.

The City's reliance on *Hamm* is misplaced, both with respect to the retroactivity principles which guided that Court and the rights that are waived by a guilty plea.

In *Linkletter v. Walker*, the United States Supreme Court held that the Fourth Amendment exclusionary rule announced in *Mapp v. Ohio* applies only to trials occurring after the date *Mapp* was decided. *Hamm*, like *Linkletter*, addressed the retroactivity of a new constitutional rule of criminal procedure. Constitutional rules of criminal procedure, such as the exclusionary rule or the right to a 12 person jury, have nothing to do with the power of the state to penalize certain conduct. Rather, these rules pertain only to the process by which it is determined whether a person engaged in such conduct. As a general matter, under *Linkletter*, these rules are not retroactively applied. But, when "the conduct being penalized is constitutionally immune from punishment [n]o circumstances call more for the invocation of a rule of complete retroactivity." *United States v.*

[3] The Minnesota Constitution has since been amended to provide for 6 person juries in misdemeanor and gross misdemeanor cases.

United States Coin and Currency, 401 U.S. 715, 724, 91 S.Ct. 1041, 1046 (1971). *See People v. Meyerowitz*, 61 Ill.2d 200, 335 N.E.2d 1 (1975) (court decision invalidating Illinois drug crime statute applied retroactively to permit recovery of fines and costs for defendants who had earlier pleaded guilty).

In *Hamm*, the Minnesota Supreme Court, as a practical matter, created a new constitutional rule of criminal procedure. In *Kuhlman*, it did not. *Kuhlman* held that the Minnesota traffic code did not authorize the City to penalize vehicle owners for red light violations simply because their vehicles were photographed going through a red light. Because the City was without authority even to initiate these prosecutions, "[n]o circumstances call more for the invocation of a rule of complete retroactivity." *United States v. United States Coin and Currency, supra.*

In *Hamm*, the Court correctly noted that a defendant who pleads guilty to a criminal offense waives objections to alleged constitutional procedural violations that occurred before the guilty plea. *See e.g., Tollet v. Henderson*, 411 U.S. 258, 93 S.Ct. 1602 (1973) (guilty plea was waiver to grand jury selection process objection); *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441 (1970) (guilty plea was waiver to involuntary confession objection). *See also, Brady v United States*, 397 U.S. 742, 90 S.Ct. 1463 (1970) (guilty plea influenced by death penalty procedure later declared unconstitutional did not render guilty plea involuntary). However, much like a lack of subject matter jurisdiction claim, a guilty plea does not preclude a defendant from later attacking a prosecution which the state had no authority to commence. *Blackledge v. Perry*, 417 U.S. 21, 94

S.Ct. 2098 (1974). *See generally, United States v. Broce*, 488 U.S. 563, 109 S.Ct. 757 (1989).

In *Perry*, the defendant, while in prison, was charged in North Carolina with misdemeanor assault with a deadly weapon. At that time, North Carolina law required that misdemeanor cases be tried to the court without a jury. If the defendant were found guilty, the defendant had a right to appeal to a superior court and obtain a trial *de novo* before a jury. The defendant in *Perry* was convicted at his court trial and sentenced to 6 months imprisonment, consecutive to the prison sentence he was then serving. The defendant filed an appeal for a trial *de novo*. After the appeal was filed, the prosecutor obtained a felony indictment against the defendant alleging the same behavioral incident which had been the basis for the misdemeanor prosecution. The defendant pleaded guilty to the felony indictment in return for a sentence concurrent with his prison sentence. Several months later, he filed a petition for post conviction relief in federal court claiming that the felony indictment violated due process of law. The Supreme Court agreed, holding that by charging the defendant with a felony in response to the appeal of a misdemeanor conviction, the state violated the right to due process of law.

The Court next addressed the issue of whether the defendant waived his due process claim by pleading guilty to the felony indictment. The Court held that the defendant's guilty plea did not preclude him from raising his due process claim. The Court recognized a "fundamental distinction" between the challenges to the

guilty pleas in *Tollet*, *McMann* and *Brady* and the challenge to the guilty plea in *Perry*:

> Although the underlying claims presented [in *Tollet, McMann* and *Brady*] were of constitutional dimension, none went to the very power of the State to bring the defendant into court to answer the charge brought against him. *** Perry is not complaining of 'antecedent constitutional violations' or of a 'deprivation of constitutional rights that occurred prior to the entry of the guilty plea.' (citation omitted). Rather, the right that he asserts and that we today accept is the right not to be haled into court at all upon the felony charge. The very initiation of the proceedings against him ... thus operated to deny him due process of law.
>
> ***
>
> North Carolina simply could not permissibly require Perry to answer to the felony charge. That being so, it follows that his guilty plea did not foreclose him from [collaterally] attacking his conviction....

417 U.S. at 30-31, 94 S.Ct. at 2103-04.

In this case, the Defendants are not seeking to withdraw their guilty pleas on the grounds that a procedural violation occurred before they entered their pleas. Rather, as in *Perry*, they are attacking their convictions on the grounds that the City was without power to initiate these prosecutions. Because the City was without such power, the Defendants' are entitled to withdraw their guilty pleas "to correct a manifest injustice." Minn. R. Cr. P. 15.05, subd. 1

The Defendants who paid prosecution costs as part of a suspended prosecution agreement with the City have the same power to challenge the City's authority to prosecute as the Defendants who pleaded guilty.

"In Minnesota plea agreements have been analogized to contracts and principles of contract law are applied to determine their terms." *In the Matter of Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). The doctrine of mutual mistake applies to plea agreements. *See e.g., State v. DeZeler*, 427 N.W.2d 231 (Minn. 1988) (defendant allowed to withdraw a negotiated guilty plea where there was a mutual mistake about the defendant's criminal history score). "If, at the time of contracting, both parties are mistaken as to a basic assumption on which the contract was made and that mistake has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party...." 20 Minnesota Practice Series, *Minnesota Business Law Deskbook*, § 7.14 (2007). "Whether a mistake is one of law or fact is not significant when applying the doctrine of mutual mistake." *Id.*

In this case, the doctrine of mutual mistake allows the Defendants to void their suspended prosecution agreements with the City. At the time these agreements were made, the Defendants and the City believed that the Minneapolis vehicle owner liability ordinances were valid. But for this mutual mistake, the parties would not have entered the agreements. Accordingly, the Defendants may properly void these agreements. With the suspended prosecution agreements now voided, the City must return the prosecution costs it obtained from the Defendants.

MSW